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Nos. 95-1709 and 95-1751

In the Supreme Court of the United States

OCTOBER TERM, 1995

TEMPLETON COAL COMPANY, INC., *et al.*,
Petitioners,
v.
DONNA E. SHALALA, *et al.*

DAVON, INC.,
Petitioner,
v.
DONNA E. SHALALA, *et al.*

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR RESPONDENTS THE UMWA COMBINED BENEFIT FUND AND ITS TRUSTEES IN OPPOSITION

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QUESTION PRESENTED

In the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), 26 U.S.C. §§ 9701 *et seq.*, Congress determined that each employer that voluntarily participated in the collectively bargained multiemployer health care system for active and retired miners in the coal industry and whose former employees were still receiving benefits from that system, should, beginning on February 1, 1993, pay the future health care costs of the retired employees and dependents assigned to that employer by the Secretary of Health and Human Services under the criteria set forth in the statute.

The question presented is whether the Coal Act, as applied to petitioners, violates the Due Process and Takings Clauses of the Fifth Amendment.

LIST OF PARTIES

The captions of the petitions list all the parties to the cases in the courts below. The petition in No. 95-1709 misspells the name of respondent Gail R. Wilensky. The petition in No. 95-1751 misspells the name of respondent Elliot A. Segal.

After this litigation began, the functions assigned to the Secretary under the Coal Act were transferred by Congress to the Commissioner of Social Security. *See* Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, §§ 105(a)(2)(A), 108(h)(9)(A), 108 Stat. 1472, 1487-88 (1994).

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
STATUTE INVOLVED	2
STATEMENT OF THE CASE	2
A. The UMWA Multiemployer Health And Medical Funds	3
1. The Establishment of the UMWA Multiemployer Health Care System	3
2. The Establishment of the UMWA 1950 and 1974 Benefit Trusts	6
B. The Crisis That Threatened The UMWA Trusts' Beneficiaries And The Efforts To Resolve It	7
C. Congressional Solution To The Health Care Crisis In The Coal Industry—The Coal Act	11
D. Petitioners' Participation In The UMWA Trusts And Their Role In The Financial Crisis Leading To The Passage Of The Coal Act	13
E. Petitioners' Constitutional Challenges to the Coal Act	16
ARGUMENT	17
I. THE COURT OF APPEALS CORRECTLY REJECTED PETITIONERS' ARGUMENT THAT A HEIGHTENED STANDARD OF DUE PROCESS REVIEW SHOULD BE APPLIED TO THE COAL ACT	19

TABLE OF CONTENTS—Continued

Page

II. THE COURT OF APPEALS CORRECTLY CONCLUDED THAT THE COAL ACT DOES NOT EFFECT AN UNCONSTITUTIONAL TAKING OF PETITIONERS' PROPERTY 22

CONCLUSION 30

TABLE OF AUTHORITIES

CASES Page

Barrick Gold Exploration, Inc., et al. v. Hudson, et al., 47 F.3d 832 (6th Cir.), *cert. denied*, 116 S. Ct. 64 (1995) 17-18
Blue Diamond Coal Co. v. Secretary of HHS, et al., 79 F.3d 516 (6th Cir. 1996), *pet. for rhg. pending* (filed April 29, 1996) 17, 25, 28
Branch v. United States, 69 F.3d 1571 (Fed. Cir. 1995), *cert. pending*, No. 95-1807 (filed May 6, 1996) 28
Concrete Pipe & Products of Cal. v. Construction Laborers Pension Trust, 508 U.S. 602 (1993) 22
Connolly v. Pension Benefit Guaranty Corp., 475 U.S. 211 (1986) 16, 17, 18, 22, 24, 25, 27, 28
Holland v. Eagle Coal & Dock Co., Civ. No. 2:94-0880 (S.D. W. Va. Mar. 8, 1996) 18
Holland v. High-Tech Collieries, Inc., 911 F. Supp. 1021 (N.D. W. Va. 1996) 18
Holland v. Imperial Colliery Co., Civ. No. 1:94-0793 (S.D. W. Va. Dec. 7, 1995) 18
Holland v. Keenan Trucking Co., Civ. No. 2:93-1223 (S.D. W. Va. Mar. 15, 1995), *appeal docketed*, No. 96-1262 (4th Cir. Feb. 21, 1996) 18
Holland v. Milburn Colliery Co., Civ. No. 1:94-0801 (S.D. W. Va. Dec. 7, 1995) 18
Keystone Bituminous Coal Assn. v. DeBenedictis, 480 U.S. 477 (1987) 25
LTV Steel Company, Inc., et al. v. Shalala, et al., 53 F.3d 478 (2d Cir.), *cert. denied*, 116 S. Ct. 298 (1995) 18
Landgraf v. USI Film Products, —— U.S.——, 114 S. Ct. 1483 (1994) 20
Lindsey Coal Mining Co. Liquidating Trust v. Shalala, 901 F. Supp. 959 (W.D. Pa. 1995), *appeal docketed*, No. 95-3626 (3d Cir. Nov. 16, 1995) 18
Meriden Trust & Safe Deposit Co., et al. v. Federal Deposit Insurance Corp., 62 F.3d 449 (2d Cir. 1995) 28

TABLE OF AUTHORITIES—Continued

	Page
Penn Central Transport Co. v. New York City, 438 U.S. 104 (1978)	25
Pension Benefit Guaranty Corp. v. R.A. Gray & Co., 467 U.S. 717 (1984)	19
Reynolds v. United States, 292 U.S. 443 (1934)	20
United Mine Workers of America v. Nobel, 720 F. Supp. 1169 (W.D. Pa. 1989), *aff'd without opinion*, 902 F.2d 1558 (3d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991)	29
United States v. Monsanto Company, 858 F.2d 160 (4th Cir. 1988), *cert. denied*, 490 U.S. 1106 (1989)	21
United States v. Northeastern Pharmaceutical and Chemical Co., 810 F.2d 726 (8th Cir. 1986)	20
Unity Real Estate Co. v. Hudson, 889 F. Supp. 818 (W.D. Pa. 1995)	18
Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976)	19
Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980)	27
STATUTES AND CONSTITUTIONAL PROVISIONS	
U.S. Const., Fifth Amendment	19, 22
Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), 26 U.S.C. §§ 9701 *et seq*	*passim*
26 U.S.C. § 9701 (historical note)	11
26 U.S.C. § 9702	12
26 U.S.C. § 9703	12
26 U.S.C. § 9704	13, 15
26 U.S.C. § 9705	13
26 U.S.C. § 9706	12, 15, 21
26 U.S.C. § 9708	20
26 U.S.C. § 9712	12
26 U.S.C. § 9722	2
30 U.S.C. § 1232(h)	2, 13
Employee Retirement Income Security Act of 1974 ("ERISA), 29 U.S.C. §§ 1001 *et seq.*	6, 23

TABLE OF AUTHORITIES—Continued

Page

Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, §§ 105(a)(2)(A), 108(h)(9)(A), 108 Stat. 1472, 1487-88 (1994) ii
26 U.S.C. § 404 ..... 5, 6

MISCELLANEOUS

20 C.F.R. §§ 422.601-607 15
136 Cong. Rec. S12312 (daily ed. Oct. 2, 1989) 7-8
Coal Commission Report: A Report to the Secretary of Labor and the American People (November 1990) ..... *passim*
H.R. Rep. No. 2543, 83d Cong., 2d Sess. (1954), *reprinted in* 1954 U.S.C.C.A.N. 5280 5
S. Rep. No. 1622, 83d Cong., 2d Sess. (1954), *reprinted in* 1954 U.S.C.C.A.N. 4623 5

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-33a) is reported at 75 F.3d 1114.[1] The opinion of the district court (Pet. App. 34a-83a) is reported at 882 F. Supp. 799. An earlier opinion of the district court (Pet. App. 84a-109a) is reported at 855 F. Supp. 990. The district court's order in No. 95-1709 (Pet. App. 110a-112a) is not reported.

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[1] "Pet. App." refers to the appendix in No. 95-1709.

STATUTE INVOLVED

This case concerns the constitutionality of the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), Pub. L. No. 102-456, 106 Stat. 2776, 3036-3056. Neither petition reproduces the statute in full. The petition in No. 95-1709 omits 26 U.S.C. § 9722, as well as the Coal Act amendments to the Surface Mining Control and Reclamation Act of 1977 (the "Surface Mining Act"), which are codified in principal part in 30 U.S.C. § 1232(h). The petition in No. 95-1751 also omits the amendments to the Surface Mining Act, as well as the prefatory provisions of the Coal Act, which set forth the Act's title and Congress's findings and declarations of policy. Accordingly, the entire statute, as it appears in the Statutes at Large, is reproduced in the appendix to this brief.

STATEMENT OF THE CASE

Both petitions present an incomplete and misleading account of the origins of the Coal Act, the problem that Congress sought to address, the nature of the legislative solution, and the rationale for the congressional action. Similarly, both petitions omit any description of the reasoning of the courts below, both of which (like all of the other federal courts that have rendered judgment on the Coal Act) rejected petitioners' arguments and sustained the statute in its entirety.

To put the Coal Act and the present dispute in its proper context, we first review the nearly 50-year history of the UMWA Health & Retirement Funds, petitioners' substantial participation in those Funds, and the financial crisis that afflicted the Funds, as petitioners and more and more employers like them discontinued their participation and left their former employees behind, either to receive no retiree health care at all or to obtain such care at the expense of other employers. We then turn to the Coal Act itself and its legislative history, explaining the provisions of the statute, the reasons for the congressional

intervention, and the basis for Congress's conclusion that the problem could not be solved through private collective bargaining. Finally, we summarize the decisions below and the grounds on which petitioners' constitutional challenges were rejected.

A. The UMWA Multiemployer Health And Medical Funds

For more than forty years, the United Mine Workers of America ("UMWA") and the Bituminous Coal Operators' Association, Inc. ("BCOA"), a multiemployer bargaining association representing various companies in the coal industry, have entered into a series of collective bargaining agreements known as National Bituminous Coal Wage Agreements ("NBCWAs"). Each NBCWA required signatory coal operators to pay contributions to finance health benefits for both active and retired miners and their dependents through multiemployer benefit plans. The origin of these plans was an historic agreement between the federal government and the UMWA.

1. *The Establishment of the UMWA Multiemployer Health Care System*

The first coal industry multiemployer benefit plan was created in an agreement between the UMWA and the United States, in settlement of a national strike during which the federal government had seized virtually all of the nation's coal mines. The dispute began when, during collective bargaining negotiations between the UMWA and the bituminous coal operators, the UMWA proposed that the parties create a health and welfare fund for its members. The employers rejected the proposal and a strike ensued. In an effort to end the strike and avoid further disruption in the coal and other industries, President Truman issued Executive Order No. 9728 on May 21, 1946, directing Secretary of the Interior Julius Krug to seize the mines. The order also authorized Secretary Krug to negotiate with the UMWA for changes in the miners' terms and conditions of employment.

Those negotiations culminated in what is known as the Krug-Lewis Agreement. The Krug-Lewis Agreement created a multiemployer benefit plan called the United Mine Workers of America Welfare and Retirement Fund (the "1946 W&R Fund"). The 1946 W&R Fund was intended to provide various health and retirement benefits to UMWA miners and their dependents and survivors. In addition, under the Krug-Lewis Agreement, the federal government committed to conduct a comprehensive study of medical facilities and medical care in the nation's coal mining areas. At the request of Secretary Krug, that survey was conducted, and a report prepared, by Rear Admiral Joel T. Boone of the United States Navy Medical Corps.

In 1947, the UMWA and coal operators created a new multiemployer benefit plan known as the 1947 UMWA Welfare and Retirement Fund (the "1947 W&R Fund"), which succeeded to the assets and liabilities of the 1946 W&R Fund. Like its predecessor, the 1947 W&R Fund was created to make payments to UMWA miners and their dependents for a broad range of health and retirement benefits. By the end of December 1948, the 1947 W&R Fund had provided medical benefits and pensions to more than 250,000 coal miners and their families in 26 states.

In 1950, the UMWA and coal operators created a new multiemployer fund called the United Mine Workers of America Welfare and Retirement Fund of 1950 (the "1950 W&R Fund"). The 1950 W&R Fund succeeded to the assets and liabilities of the 1947 W&R Fund. Like the 1946 W&R Fund and the 1947 W&R Fund, the 1950 W&R Fund was intended to provide pension and health benefits to UMWA miners and their dependents.[2]

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[2] Employer contributions to the 1950 W&R Fund were not tax deductible until 1954, when Congress amended the Internal Revenue Code. Congress wrote the amendment in such a way that it effec-

In July 1950, building upon the 1947 W&R Fund's medical program, the 1950 W&R Fund introduced a comprehensive hospital and medical care program. The program included the payment of unlimited hospitalization and in-hospital medical care for the following classes of beneficiaries: working and unemployed miners; working and unemployed miners' wives and dependent children under age 18; retired miners and their wives; widows of deceased miners; and relatives of deceased miners who cared for the miners' orphaned children. The program's hospital and medical care coverage for miners' widows terminated only upon their remarriage.

During the 28 years of their existence, from 1946 to 1974, the 1950 W&R Fund and its predecessors provided comprehensive health care coverage to UMWA active and retired miners and their families. As such, the Funds had a significant impact on the economies of the bituminous coal producing states and the UMWA mining families that lived in those states. During this period, the 1950 W&R Fund and its predecessors collected approximately $3.9 billion in contributions from signatory coal operators, and paid approximately $1.5 billion in hospital and medical care benefits, $283 million in survivors and other related benefits, and approximately $2 billion in pension benefits.[3]

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tively applied only to the 1950 W&R Fund. *See* 26 U.S.C. § 404(c) (1954). In recommending the amendment, the Senate Finance Committee emphasized that the fund was "established during a period of Government operation" and was "the result of an agreement between employee representatives and the United States Government during a period of Government seizure and operation of most of the facilities of the industry." S. Rep. No. 1622, 83d Cong., 2d Sess. 56 (1954), *reprinted in* 1954 U.S.C.C.A.N. 4623, 4687. *See also* H.R. Rep. No. 2543, 83d Cong., 2d Sess. 43 (1954), *reprinted in* 1954 U.S.C.C.A.N. 5280, 5303.

[3] Over the years, the 1950 W&R Fund from time to time increased, decreased, or suspended certain benefits. For example, on January 15, 1954, the 1950 W&R Fund limited the duration of

2. The Establishment of the UMWA 1950 and 1974 Benefit Trusts

The 1950 W&R Fund continued to provide health benefits through the term of the 1971 NBCWA, which ended in 1974. Under the 1974 NBCWA, however, partly in response to the enactment of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* ("ERISA"), BCOA and the UMWA agreed to divide the 1950 W&R Fund into four separate multiemployer plans.[4] Two of the four new plans provided pension benefits to retired miners. The other two plans provided health benefits to retired miners. One of the health benefit plans, known as the United Mine Workers of America 1950 Benefit Plan and Trust (the "1950 Benefit Trust"), provided health benefits to UMWA miners who retired before 1976. The second plan, known as the United Mine Workers of America 1974 Benefit Plan and Trust (the "1974 Benefit Trust"), provided

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hospital and medical coverage for widows, dependent children, and orphans of deceased miners to the twelve-month period during which a survivors benefit was paid on their behalf. On April 11, 1960, the 1950 W&R Fund imposed hospital and medical care eligibility restrictions for unemployed miners and miners disabled as a result of work-related injuries. On January 19, 1967, the eligibility for widows and dependent survivors of both working and retired miners was partially restored. Finally, on November 13, 1973, the 1950 W&R Fund restored the eligibility for hospital and medical care benefits for widows of miners killed in mine accidents and miners disabled as a result of work-related injuries. As had been the case before such eligibility was first limited in 1954, these beneficiaries' eligibility for hospital and medical benefits was restored for their lives or, in the case of surviving spouses, until they remarried.

[4] In 1974, Congress again enacted special provisions in the Internal Revenue Code to alleviate potential tax burdens that otherwise would have accompanied the restructuring of the 1950 W&R Fund. The rationale supporting these special provisions was the same as the one that supported the original enactment of Section 404(c) of the Internal Revenue Code twenty years earlier.

health benefits for miners who retired in 1976 or thereafter as well as for the active work force.[5]

In 1978, the UMWA and BCOA restructured the industry's contractual health care system to address employer concerns that the multiemployer approach was unraveling as fewer companies elected to participate in the multiemployer plans and an increasing burden was placed on a shrinking base of signatory operators. The 1978 NBCWA continued the multiemployer approach for providing health benefits to persons who retired before January 1, 1976, but it provided that persons who retired on or after that date would receive their health benefits from single-employer plans maintained by the retirees' "last NBCWA signatory employer." The 1974 Benefit Trust was retained to provide health benefits on a multiemployer basis to those persons who retired on or after January 1, 1976 and whose last signatory employers were no longer in business.

B. The Crisis That Threatened The UMWA Trusts' Beneficiaries And The Efforts To Resolve It

During the past decade, the problems that led to the 1978 restructuring of the collectively bargained multiemployer health care system became more acute and threatened the 1950 and 1974 Benefit Trusts' ability to continue providing health benefits to their beneficiaries. The uncertainty of continued health benefits for active and retired UMWA miners led to substantial labor strife in the nation's bituminous coal mining regions and threatened the economies of several coal producing states.[6]

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[5] The UMWA multiemployer health and medical benefit plans, *i.e.*, the 1946 W&R Fund, 1947 W&R Fund, 1950 W&R Fund, and the 1950 and 1974 Benefit Trusts, are collectively referred to herein as the "UMWA Trusts."

[6] *See, e.g.*, 136 Cong. Rec. S12312 (statement of Senator Rockefeller) (daily ed. Oct. 2, 1989) ("the [UMWA health] funds contribute many millions of dollars to the West Virginia economy and

One of the most serious of these labor disputes was a ten-month strike by the UMWA against the Pittston Coal Company and its related entities. When collective bargaining failed to resolve the dispute, Secretary of Labor Elizabeth Dole intervened and appointed former Secretary of Labor William J. Usery as mediator. As part of the eventual settlement of the dispute, Secretary Dole established a special advisory commission called the Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits (the "Coal Commission"). The Secretary authorized the Coal Commission to analyze the retiree health care crisis and recommend a solution. Former Secretary Usery was appointed Chair of the Coal Commission.

In November 1990, the Coal Commission submitted its findings and recommendations to Secretary Dole in a report entitled "Coal Commission Report: A Report to the Secretary of Labor and the American People."[7] In analyzing the health care crisis in the coal industry, the Coal Commission stated that ensuring the continued provision of health benefits to UMWA retirees and their dependents should be the primary objective of any proposed solution:

> Retired coal miners have legitimate expectations of health care benefits for life; that was the promise they received during their working lives and that is how they planned their retirement years. That commitment should be honored. But today those expectations and commitments are in jeopardy.

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sustain the efforts of many health care practitioners and organizations. If allowed to continue unchecked, the financial difficulties in the UMWA health funds could cripple health care delivery in West Virginia and in coal counties of states like Alabama, Arkansas, Colorado, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, and Virginia").

[7] A copy of the Coal Commission Report has been lodged with the Clerk of this Court.

Coal Commission Report at 1. Recognizing the historical origins of the UMWA Trusts, the Coal Commission observed:

> The medical care delivery system that has evolved is as much a creature of government as it is of the collective bargaining process. There is a line running from the original Boone Report to the present system. In a way, the original Krug-Lewis agreement predisposed if not predetermined the system that evolved.

Id. at 29. The Coal Commission identified three developments, the combination of which "has left the Funds, which were created to provide retired coal miners and their families with one of the finest health care programs in the nation, in a financial crisis." *Id.* at 2.

First, the Coal Commission found that "the number of coal companies making contributions to the Funds has declined significantly." Coal Commission Report at 2.[8] Second, it recognized the dramatic increase in the cost of health care between 1950 and 1990, stating that "[i]n the past 10 years alone, the total cost of [annual] health care benefits paid by the Funds has doubled from $117.4 million to $245.3 million." *Id.* Finally, the Coal Commission noted the "steady increase in the number of orphaned retirees whose employers have either gone out of business or no longer provide health care benefits." *Id.* In light of these facts and its finding that the 1950 and 1974 Benefit Trusts' funding bases were declining faster than their beneficiary populations, the Coal Commission predicted that the Ben-

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[8] The Coal Commission found that, while companies contributing to the UMWA multiemployer health benefit system in 1950 represented 80 percent of the coal produced in the nation, "by 1990, companies making contributions to the [UMWA Benefit Trusts] account[ed] for only 30 percent of national coal production." Coal Commission Report at 2.

efit Trusts would have a combined estimated deficit of $300 million by 1993. *Id.* at 3.

The Coal Commission recognized that the collective bargaining process was inadequate to provide a long-term solution to the health care crisis. Coal Commission Report at 3. The Commission therefore recommended two statutory approaches. Under the first approach, the Commission called for the creation of two new funds: (1) a quasi-governmental corporation financed by an industry-wide tax on all coal operators to finance the health care of UMWA orphan retirees; and (2) a private multiemployer fund financed by signatories to the 1978 and later NBCWAs to provide health care to UMWA retirees whose last employer remained in business. *Id.* at 61-64. The second approach called for the creation of a single, private multiemployer plan to provide health benefits to UMWA retirees in the 1950 and 1974 Benefit Trusts, including the orphan retirees. *Id.* at 65-69. To produce the revenue that the first approach would have generated through an industry-wide tax, the second approach contained a financing scheme that imposed liability not just upon employers that signed the 1978 or a later NBCWA, but upon *all* employers and their related business entities that were, at one time, signatory to one or more NBCWAs:

> Instead of imposing a new tax on all coal operators and establishing an agency of the federal government, *this plan seeks additional revenues from a broadened base of current and past signatories to the contracts,* establishing and providing revenues for the Benefit Funds. Past obligations would be defined as those arising from firms once signatory who may be identified through a chain of succession to a current operator.

Id. at 65 (emphasis supplied); *see also id.* at 67.

C. Congressional Solution To The Health Care Crisis In The Coal Industry—The Coal Act

Following the Coal Commission's Report, Congress undertook its own intensive examination of the subject. The Coal Act was the final product of those deliberations.[9] In enacting the Coal Act, Congress found that:

> it is necessary to modify the private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

App. 1a, *see* 26 U.S.C. § 9701 (historical note). Congress further stated that the policy of the Coal Act is:

> to remedy problems with the provisions and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry . . . [and] to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.

App. 1a, *see* 26 U.S.C. § 9701 (historical note).

In the Coal Act, Congress created two new trust funds for the provision of health care benefits to retired miners and their dependents. One of those funds, the UMWA Combined Benefit Fund (the "Combined Fund"), is at

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[9] Templeton's assertion that there was no opportunity for public comment on Congress's decision to include pre-1978 signatory operators in the Coal Act financing plan (Templeton Pet. 7 n.5) is unfounded. The Coal Act was the subject of intensive public debate and lobbying in Congress, and numerous coal companies opposing the legislation joined together to press their views on both the Coal Commission and Congress. *See, e.g.*, the several references in the Coal Commission Report to the views of the so-called Private Benefit Alliance. That those efforts were unsuccessful hardly means that there was no opportunity for them to be made.

issue here.[10] As the statute required, the 1950 and 1974 UMWA Benefit Trusts were merged into the Combined Fund as of February 1, 1993. *See* 26 U.S.C. § 9702(a)(2). The Combined Fund now provides health and death benefits to coal industry retirees who, as of July 20, 1992, were eligible to receive, and were receiving, benefits from the UMWA 1950 or 1974 Benefit Trusts. 26 U.S.C. § 9703(a), (b)(1), (e), (f).

In the Coal Act, Congress adopted a financing arrangement for the Combined Fund similar to the alternative approach recommended by the Coal Commission, under which only employers that were signatory to one or more NBCWAs are required to share the burden of financing health benefits for the affected retirees and their dependents. Each employer's annual liability to the Combined Fund is based on the number of beneficiaries that have been assigned to it by the Secretary in accordance with a specific list of priorities set forth in the statute. *See* 26 U.S.C. § 9706. Under the detailed statutory criteria, the Secretary is required to place a higher assignment priority on post-1978 NBCWA signatories than on pre-1978 NBCWA signatories.[11] The Coal Act also assigns to 1988 NBCWA signatories the financial responsibility

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[10] The Coal Act also created the 1992 United Mine Workers of America Benefit Plan ("1992 Plan"), an entirely new entity designed to provide benefits to eligible retirees who are not beneficiaries of the Combined Fund and who are not receiving health care coverage directly from their former employers. *See* 26 U.S.C. § 9712.

[11] Specifically, the assignment rules provide that the Secretary is first required to assign each retiree to the employer that was signatory to the 1978 NBCWA or any subsequent NBCWA and that most recently employed the retiree for at least two years. 26 U.S.C. § 9706(a). If the Secretary cannot assign a retiree to a coal operator pursuant to this first method, she is next required to assign the retiree to the coal operator that was signatory to the 1978 NBCWA or any subsequent NBCWA, and that employed the retiree most recently in the coal industry, without regard to the number of years of employment. Third, if she cannot assign a retiree to a coal operator pursuant to the first two methods, the Secretary is required to assign the retiree to the pre-1978 signatory

for funding the start-up costs of the Combined Fund, 26 U.S.C. § 9704(i)(1)(A), and for eliminating any deficit of the 1950 and 1974 Benefit Trusts as of February 1, 1993, the termination date of the 1988 NBCWA and the date on which the Combined Fund began providing benefits under the statute, 26 U.S.C. § 9704(i)(1)(B).

D. Petitioners' Participation In The UMWA Trusts And Their Role In The Financial Crisis Leading To The Passage Of The Coal Act

During the 1920s, John A. Templeton established several coal mining companies throughout Indiana, including three of the petitioners in No. 95-1709. He first incorporated Templeton in 1920. Thereafter, he incorporated Princeton in 1923, followed by Sherwood-Templeton in 1929. All three companies mined coal primarily in Indiana using UMWA-represented employees. Currently, Sherwood-Templeton and Templeton own mineral rights in numerous coal properties throughout Indiana and "engage[] in the usual activities incident to the ownership of interests in such property." Additionally, Sherwood-Templeton manages approximately 5,500 acres of coal lands in Greene and Sullivan Counties, Indiana. The Templeton companies were all NBCWA signatories and collectively participated in the UMWA Trusts for more than twenty years.[12]

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operator that employed the retiree for the longest period of time. If the Secretary cannot identify any NBCWA signatory operator that remains in business (or that has a "related person" remaining in business) and that formerly employed a particular retiree, the retiree is designated an "unassigned beneficiary," and his health benefits are financed by the statutory transfers of funds from the UMWA 1950 Pension Plan or the Abandoned Mine Reclamation Fund and, if necessary, by the assigned operators' payment of an unassigned beneficiaries premium. *See* 26 U.S.C. §§ 9704(d), 9705, 30 U.S.C. § 1232(h).

[12] Specifically, Princeton was a signatory to the 1950 NBCWA and to the 1951, 1952, 1955, 1956, and 1958 amendments to the 1950 NBCWA. It participated in the UMWA Trusts until 1966. Templeton was a signatory to the 1950 NBCWA and the 1951 and 1952

Berwind, the last of the petitioners in No. 95-1709, has its own extremely complex corporate structure spanning more than 75 years, with bituminous coal mining operations in at least five states. Specifically, Berwind-White Coal Mining Company ("Berwind-White") was incorporated in Pennsylvania in 1915. Berwind-White was a direct signatory to the 1950 NBCWA and the 1951, 1952, 1955, 1956, and 1958 amendments to the 1950 NBCWA. Although it ceased direct mining activities in 1962, in January 1963, as a result of a merger with another coal company, Berwind-White became a 98% shareholder of Reitz Coal Company ("Reitz").[13] Berwind-White continued to engage in coal mining activities through Reitz. Reitz was a signatory to the 1968, 1971, 1974, 1978, and 1981 NBCWAs. It contributed not only to the 1950 W&R Fund but also to the 1950 and 1974 Benefit Trusts. In 1967, Berwind-White changed its name to Berwind Corporation. Berwind is thus the same corporate entity that, directly or indirectly (through its subsidiary Reitz), participated in the UMWA Trusts for nearly 40 years, until at least 1984, when the 1981 NBCWA was terminated.

Davon's predecessor corporation, the New York Coal Company ("New York Coal"), was incorporated in 1902, and was engaged in bituminous coal mining from November 1933 through January 1954. While it was engaged in bituminous coal mining, New York Coal employed UMWA-represented miners and was signatory to the 1950

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amendments to that agreement. Templeton participated in the UMWA Trusts until at least 1954. Sherwood-Templeton was a signatory to the 1950 NBCWA and the 1951, 1952, 1955, 1956, and 1958 amendments thereto. Sherwood-Templeton discontinued its participation in the UMWA Trusts in 1960. Thereafter, in 1967, Templeton acquired a 100% interest in Sherwood-Templeton.

[13] Berwind subsequently acquired the remaining 2% and became the sole shareholder of Reitz. In September 1964, another coal company, New River and Pocahontas Consolidated Coal Company ("New River") merged into Berwind-White.

NBCWA and the 1951 and 1952 amendments thereto. It participated in the UMWA Trusts from their inception in 1946 through January 1954, when New York Coal sold its coal mining assets.

Among the five petitioners, Berwind has by far the largest obligation to the Combined Fund under the Coal Act. In the Secretary's original assignment of Combined Fund beneficiaries in the fall of 1993, Berwind was assigned 914 beneficiaries; no other petitioner was assigned more than 117 beneficiaries. None of these beneficiary assignments is at issue here. The Coal Act (and the Secretary, by implementing regulations) provide a mechanism for challenging the assignment of beneficiaries. *See* 26 U.S.C. § 9706(f); 20 C.F.R. §§ 422.601-607. Judicial review of the Secretary's final administrative determinations following such challenges is available under the Administrative Procedure Act. No such review is involved in these cases.[14]

Although petitioners have varying corporate histories, they all share important factual ties. Specifically, petitioners were all signatories to one or more NBCWAs and therefore reaped the economic benefits not only of the miners' labor but also of the maintenance of a stable available pool of skilled labor, which the UMWA multiemployer health care system encouraged and supported. As NBCWA signatories, petitioners all participated in that health care system. When petitioners ceased to participate in the UMWA Trusts, they stopped paying con-

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[14] Petitioners incorrectly characterize their initial assessments under the Coal Act as first-year premiums. Templeton Pet. 9; Davon Pet. 10. In fact, no assessments could be made until the Combined Fund's second plan year, after the Secretary completed the assignment of beneficiaries under 26 U.S.C. § 9706, Accordingly, the initial assessments (and the amounts reported by petitioners) were the sum of the premiums for the Combined Fund's first plan year (February-September 1993) and second plan year (October 1993-September 1994), and were to be paid in twelve equal monthly installments during the second plan year. *See* 26 U.S.C. § 9704(g).

tributions to the UMWA Trusts. The UMWA Trusts, however, continued to provide comprehensive health care benefits to petitioners' retirees. During the period after petitioners ceased to participate in the UMWA Trusts, and before the Coal Act became effective, these benefits were financed entirely by other coal companies. In light of this background, petitioners' claims that they are strangers to the UMWA Trusts are disingenuous and inaccurate.

E. Petitioners' Constitutional Challenges to the Coal Act

In September and November 1993, petitioners filed these actions, alleging that the Coal Act violates the Due Process and Takings Clauses of the Fifth Amendment. The district court rejected the due process claim, explaining that:

> Plaintiffs have simply failed to show that it was irrational for Congress to determine that operators under the NBCWAs of the 1950s and 1960s remain, at least in some part, responsible for retiree health benefit liabilities. The dispute about when lifetime benefits were promised to retired mine workers, and by whom, is a multisided contest, pitting coal mine operators from different eras against one another, as well as involving present and former mineworkers and their families. A congressional decision to come down on the side of the retirees and their spouses and dependents is not totally void of reason.

Pet. App. 58a. The court likewise rejected petitioners' takings claim, ruling that none of the three factors addressed by this Court in evaluating such claims in *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211 (1986), supports the contention that the Coal Act effects an unconstitutional taking. Pet. App. 80a.

The court of appeals affirmed. The court rejected petitioners' argument that the Coal Act's financing provisions violate due process, emphasizing Congress's deliberative approach in deciding to look to all NBCWA signatories to finance the Combined Fund:

> Congress certainly had several alternatives available to finance the Combined Fund. It could have restricted required contributions to the signatories of the latest NBCWA or, at the other extreme, raised funds from all existing coal companies or from general tax revenues. Congress also had several intermediate alternatives. For example, it could have reached back only to the 1978 NBCWA, which created the "guarantee" and "evergreen" clauses; to the 1974 NBCWA, which created the 1950 and 1974 Trusts; or to the 1950 NBCWA, which created the predecessor of all the trusts. . . . The existence of several such rationales for the Coal Act demonstrates that Congress's decision to reach back to 1950 NBCWA signatories was far from arbitrary.

Pet. App. 18a-19a. The court likewise rejected petitioners' Takings Clause argument, concluding, as the district court had before it, that "all three of the *Connolly* factors demonstrate that the Coal Act does not unconstitutionally take property from plaintiffs without compensation." Pet. App. 32a. In the court's words, "the existence of a proportional financing scheme, the lack of any reasonable expectation that plaintiffs would not be liable under the Coal Act, and the economic character of the Act, which only readjusts the benefits and burdens of economic life, preclude us from finding an unconstitutional taking." *Id.*

ARGUMENT

The decision of the court of appeals is correct, and review by this Court is not warranted. There is simply no unresolved or controversial question of federal constitutional law presented here. Four panels of three courts of appeals (including the decision below) have unqualifiedly upheld the constitutionality of the Coal Act in the face of challenges like petitioners'. *See Blue Diamond Coal Co. v. Secretary of HHS, et al.*, 79 F.3d 516 (6th Cir. 1996), *pet. for rehg. pending* (filed April 29, 1996); *Barrick Gold Exploration, Inc., et al. v. Hudson, et al.*, 47 F.3d 832 (6th Cir.), *cert. denied*, 116 S. Ct. 64

(1995); *LTV Steel Company, Inc., et al. v. Shalala, et al.*, 53 F.3d 478 (2d Cir.), *cert. denied*, 116 S. Ct. 298 (1995).

In addition, several district courts have held that the Coal Act comports fully with the Due Process and Takings Clauses of the Fifth Amendment. *See Holland v. Eagle Coal & Dock Co.*, Civ. No. 2:94-0880 (S.D. W. Va. Mar. 8, 1996); *Holland v. High-Tech Collieries, Inc.*, 911 F. Supp. 1021 (N.D. W. Va. 1996); *Holland v. Imperial Colliery Co.*, Civ. No. 1:94-0793 (S.D. W. Va. Dec. 7, 1995); *Holland v. Milburn Colliery Co.*, Civ. No. 1:94-0801 (S.D. W. Va. Dec. 7, 1995); *Lindsey Coal Mining Co. Liquidating Trust v. Shalala*, 901 F. Supp. 959 (W.D. Pa. 1995), *appeal docketed*, No. 95-3626 (3d Cir. Nov. 16, 1995) (oral argument heard on June 3, 1996); *Holland v. Keenan Trucking Co.*, Civ. No. 2:93-1223 (S.D. W. Va. Mar. 15, 1995), *appeal docketed*, No. 96-1262 (4th Cir. Feb. 21, 1996). *But see Unity Real Estate Co. v. Hudson*, 889 F. Supp. 818 (W.D. Pa. 1995) (order relying on Takings Clause as basis for preliminary injunction in favor of related person alleging inability to pay) (motions for summary judgment pending).

There is no suggestion by petitioners that a conflict among the courts of appeals exists, or is even likely to occur in the future. Oddly, Davon concedes as much, stating that "no conflict is reasonably forthcoming[,]" yet it still urges the Court to grant review because of the alleged risk that other courts will "continue with their overly broad reading and mechanical misapplication of *Connolly*." Davon Pet. 19. It is a rare petition indeed that cites the absence of conflict in the courts below as an affirmative reason for granting review. Here, as in other cases, the agreement among the courts of appeals and district court, and the consistency of the many rulings upholding the Coal Act with the precedents of this Court, militate strongly against further examination of the same

legal arguments that have repeatedly been rejected without dissent in jurisdiction after jurisdiction.

I. THE COURT OF APPEALS CORRECTLY REJECTED PETITIONERS' ARGUMENT THAT A HEIGHTENED STANDARD OF DUE PROCESS REVIEW SHOULD BE APPLIED TO THE COAL ACT

Davon pursued a due process argument in the courts below but has not mentioned it in this Court. The Templeton petitioners continue to advance their "substantive due process" attack, but they do so by urging the Court to abandon the well-established "rational basis" standard for reviewing economic legislation and instead to employ a heightened level of scrutiny that petitioners characterize as the " 'harsh and oppressive' standard." Templeton Pet. 10. Petitioners contend that this standard is appropriate because of the allegedly "retroactive" nature of the Coal Act.

Missing from petitioners' argument is even the slightest acknowledgment of the court of appeals' exhaustive treatment of this subject. *See* Pet. App. 12a-25a. As the court of appeals correctly stated, "Supreme Court precedent could not be more clearly contrary" to petitioners' position. Pet. App. 14a. *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976), squarely held that the rational basis test governs due process review of economic legislation, and that the same standard applies whether the legislation is classified as prospective or retroactive. *Id.* at 14-18 (rejecting due process challenge to Black Lung Benefits Act and explaining that retrospective feature of statute should be sustained as long as it is rational). *See also Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 730 (1984) (applying rational basis test in rejecting due process challenge to Multi-Employer Pension Plan Amendments Act ("MPPAA"), and stating that constitutional "burden is met simply by showing that the retroactive application of the legislation is itself justified by a rational legislative purpose").

By contrast to the Black Lung Benefits Act and MPPAA, the Coal Act does not require any payments for periods before the statute's enactment. The Coal Act focuses entirely on *future* health care coverage for eligible beneficiaries. It does not upset, or alter in any way, prior contractual obligations concerning the provision of health care benefits during the period before the Combined Fund began providing benefits on February 1, 1993. Indeed, the statute expressly provides that it shall have no effect on pre-February 1, 1993 contractual obligations to provide retiree health benefits. 26 U.S.C. § 9708. The Coal Act thus left prior collective bargaining agreements unchanged and fully effective, recognized that future collective bargaining with an ever-decreasing number of employers could not solve the problems of the UMWA Trusts, and therefore prospectively substituted a new remedial statutory system for the preexisting contractual regime.

Contrary to petitioners' assertions, the Coal Act is not "retroactive" in any constitutionally significant way. As this Court has long held, "[a] statute is not rendered retroactive merely because the facts or requisites upon which its subsequent action depends, or some of them, are drawn from a time antecedent to the enactment." *Reynolds v. United States,* 292 U.S. 443, 449 (1934). The Court recently reaffirmed that "[a] statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment . . . or upsets expectations based in prior law." *Landgraf v. USI Film Products,* —— U.S. ——, 114 S. Ct. 1483, 1499 (1994) (citations omitted). As the Eighth Circuit has stated, a statute that "imposes liability for the *present and future* conditions resulting from past acts" is not retroactive. *United States v. Northeastern Pharmaceutical and Chemical Co.,* 810 F.2d 726, 741 (8th Cir. 1986) (emphasis in original).

But, even if the Coal Act is considered to be retroactive (notwithstanding the foregoing authority), it survives due process scrutiny because it satisfies the rational basis standard described above. Congress made a rational decision to require all NBCWA signatories that participated in the UMWA Trusts and that are assigned operators under the criteria of 26 U.S.C. § 9706 to shoulder a proportional share of the costs necessary to resolve a health care crisis.

The court of appeals found a host of support for Congress's decision to include pre-1978 signatories (including petitioners) as a source of financing for the Coal Act. The court pointed to the fact that every NBCWA signatory profited from the labor of its retired miners and shared some responsibility for creating the retirees' expectation of lifetime health benefits. Pet. App. 19a-21a. The court also cited practical considerations that supported Congress's rationale, namely, that inclusion of all NBCWA signatories in the Coal Act financing scheme would help to assure adequate funding for the Combined Fund and to avoid economic conflict in the bituminous coal industry. Pet. App. 22a-23a. The court further observed that, even if the Coal Act is thought to be retroactive, petitioners' due process attack "ignore[s] precedent upholding the unlimited retroactive reach of the Comprehensive Environmental Response Compensation and Liability Act ('CERCLA')." Pet. App. 23a. *See, e.g., United States v. Monsanto Company*, 858 F.2d 160, 173-74 (4th Cir. 1988), *cert. denied*, 490 U.S. 1106 (1989).

In sum, the Templeton petitioners have done no more than rehash arguments that the court of appeals explicitly considered and rejected. There is simply no support for petitioners' position that a heightened standard of review should be applied to the Coal Act's financing plan, and there is no basis to conclude that that plan is arbitrary or irrational.

II. THE COURT OF APPEALS CORRECTLY CONCLUDED THAT THE COAL ACT DOES NOT EFFECT AN UNCONSTITUTIONAL TAKING OF PETITIONERS' PROPERTY

At the core of petitioners' Takings Clause argument is their contention that they have no more connection to Coal Act liability than does the general public, that they are legal "strangers" to the Combined Fund and therefore can have no continuing obligation to the Combined Fund. Davon Pet. 2, 3, 5, 12-13, 20-21; Templeton Pet. 3, 8 n.7, 11, 13, 20-22. Davon declares this to be the "significant constitutional difference" between the Coal Act and the cases decided under the MPPAA. Davon Pet. 20; *see Concrete Pipe & Prods. of Cal. v. Construction Laborers Pension Trust*, 508 U.S. 602 (1993); *Connolly*, 475 U.S. 211 (1986).

Petitioners' argument that they have no connection to the Combined Fund is without merit and did not convince the court of appeals:

> [T]he consecutive NBCWAs created a continuous multi-employer scheme for providing health benefits from approximately 1950 to the present. Each of the plaintiffs participated in at least one of the NBCWAs since 1950 and thus had experience with the multi-employer plans. Plaintiffs' argument regarding experience, rather than proportionality, is only persuasive if we accept the premise that the multi-employer plans of 1974 and after are sufficiently different from prior NBCWAs such that experience with the former does not constitute experience with the latter. . . . We find the distinction wholly unpersuasive. Each consecutive NBCWA, including those after 1974, accomplished the same end—to provide benefits to miners until the next NBCWA—using the same means—funding on a multi-employer basis. . . . [E]very coal operator that participated in the multi-employer plans contributed directly to the retirees' legitimate expectations of lifetime benefits. Plaintiffs' "experience with

> the plan[s]" that eventually became the Combined Fund is easily deduced on the facts of this case.

Pet. App. 28a.

As the court explained, while petitioners were signatories to NBCWAs, they contributed to the 1950 W&R Fund and its predecessors. Petitioners' employees accumulated, based on their work for petitioners, service credits that contributed to their entitlement to retiree health benefits from the 1950 W&R Fund and, after 1974, from the 1950 Benefit Trust or the 1974 Benefit Trust. Petitioners' former employees actually received benefits from the UMWA Trusts for years, even though petitioners were not contributing to those Trusts. And when, under the Coal Act, the 1950 and 1974 Benefit Trusts were merged into the Combined Fund, petitioners' former employees became Combined Fund beneficiaries by operation of law.

Petitioners' assertion that they are "strangers" to the legacy of providing health care benefits to retired coal miners and their dependents is insupportable. Petitioners rest their entire argument on the division of the 1950 W&R Fund into four separate funds in 1974, following the enactment of ERISA, which necessitated the separation of pension plans from health benefit plans. It is not relevant in a constitutional sense that the names of the funds changed or that the pension and health components of the funds were segregated into different entities in 1974. As the court of appeals stated, "[n]othing radical happened in 1974." Pet. App. 28a. What is significant is that petitioners actively and voluntarily participated in a system that, for nearly fifty years, provided health care benefits to retired coal miners and their dependents, and through which a legitimate expectation of lifetime benefits was created. That system, although threatened in the 1980s with financial collapse, remained constant in all relevant respects from the time of petitioners' participation until the passage of the Coal Act in 1992. Every entity that signed an NBCWA and contrib-

uted to these funds and had former employees that received health benefits from them is connected to this system.

Moreover, petitioners falsely claim lack of responsibility for the crisis that led to the passage of the Coal Act. *See* Davon Pet. 12; Templeton Pet. 24. Petitioners participated in a system that engendered legitimate expectations of lifetime benefits, and, as the court below said, "[t]heir withdrawal from participation in the trusts helped create the financial crisis that resulted in the Coal Act." Pet. App. 21a. When petitioners decided to cease their participation in the NBCWA and stopped contributing to the 1950 W&R Fund, the costs of providing health benefits for their retirees and dependents were assumed by the remaining signatories to the current and future NBCWAs. When this practice of "dumping" by former NBCWA signatories multiplied years later, the entire system was pressed to the brink of ruin.[15]

The court of appeals correctly concluded that all three Takings Clause factors identified by this Court in *Connolly* and other cases support the validity of the Coal Act. Those three factors are the character of the governmental action, the economic impact of the regulation, and the

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[15] Petitioners claim that Coal Act beneficiaries will not be injured or affected in any way if petitioners prevail in this lawsuit and are relieved of their Coal Act liability. Davon Pet. 11 n.2; Templeton Pet. 13. They argue that if they do not finance the benefits of their assigned beneficiaries, others will do so, and the beneficiaries will receive the same benefits regardless. This argument points up the very problem that created the funding crisis in the first place. Petitioners assume there is an infinite well of resources that can be tapped if they (and all other pre-1974 signatories, according to their logic) are excused from their Coal Act obligations, just as they assumed that they could dump their retirees on the remaining coal operators with impunity before the passage of the Coal Act. It takes little study to realize that every time that an operator ceased to contribute to the UMWA Trusts, the system became weaker, and every time a Coal Act assigned operator ceases contributing to the statutory funds, the Coal Act financing scheme is similarly weakened.

extent to which the regulation has interfered with distinct and reasonable investment-backed expectations. *Connolly*, 475 U.S. at 224-25. *See also Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978).

As this Court has observed, "[i]t is well settled that a 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 477, 488 n.18 (1987), quoting *Penn Central*, 438 U.S. at 124 (citations omitted). By creating a statutory program to ensure that retired miners will continue to receive health benefits, the Coal Act is a classic example of the latter kind of government regulation.

Davon is wrong in asserting that the result reached below and by the Sixth Circuit in *Blue Diamond* would make the Takings Clause inapplicable in cases involving personal property. *See* Davon Pet. 16-17. Consistent with this Court's decisions, both courts of appeals correctly considered the economic regulatory nature of the Coal Act as a factor in determining whether an unconstitutional taking had occurred. Pet. App. 30a-32a; *accord*, *Blue Diamond*, 79 F.3d at 526. As the court of appeals wrote in this case, "[w]hen [petitioners] and other employers withdrew from the multiemployer plans, they left behind retired miners with legitimate expectations of lifetime benefits. As the number of employers continued to decline, the number of beneficiaries grew, and the result was a seriously underfunded health benefit program." Pet. App. 31a. Congress enacted the Coal Act to address this problem.

The contention of the Templeton petitioners (Pet. 13) that "the law was not passed to benefit former employees" and that the Coal Act "purely benefits the BCOA Operators" is misguided. Petitioners overlook a critical point.

Every NBCWA—not only the NBCWAs and numerous amendments that petitioners signed but the several later NBCWAs, including the NBCWAs of 1974, 1978, 1981, 1984, and 1988—was effective only for a term of years. This was just as true of the NBCWAs that referred to a "Health Services card until death" as it was to the earlier agreements. After each contract was terminated, the continued provision of health care depended on the negotiation and signing of a new national collective bargaining agreement that contained such benefits. But, as the years went by, fewer and fewer employers were willing to sign such an agreement. That is why fewer and fewer employers were carrying the burden of the UMWA Trusts and why both Congress and the Coal Commission concluded that the problem of financing retiree health care in the coal industry could not be solved through the collective bargaining process. In the absence of a legislative solution, BCOA operators and other signatories of the 1988 NBCWA, like petitioners and many other employers before them, could have refused to sign a new collective bargaining agreement in 1993 or thereafter and then claimed that they had no further obligation to fund health care for their own former employees or anyone else's. Petitioners' argument ignores the central question that confronted Congress during its deliberations on the Coal Act: who would pay for retiree health care in the coal industry after termination of the 1988 NBCWA, and in particular who would pay for benefits for the retirees of employers like petitioners, which had long since discontinued their financial support for the UMWA Trusts.

It was to answer this question that Congress chose to assess Coal Act obligations based on a finding of "responsibility" derived from past employment relationships rather than past contractual promises. Nothing in the Takings Clause prevents Congress from assigning greater importance to the question of how many former employees an employer has in the Combined Fund than to the question of which or how many NBCWAs an employer has signed.

Turning to the economic impact factor, the court of appeals properly focused on the question "whether the basis for regulating [petitioners] under the Coal Act—their participation in prior NBCWAs—is proportional to the economic impact caused by the Act." Pet. App. 27a. The court correctly concluded that "[t]he Coal Act's financing scheme is based on proportionality." *Id.* Far from being determined "in a vacuum," petitioners' Coal Act obligations are proportional to petitioners' own participation in the UMWA retiree health care system and to the number of beneficiaries that petitioners helped to add to that system and to the Combined Fund. The Coal Act thus does not involve any disproportionate economic impact that would raise constitutional concern. *See Connolly*, 475 U.S. at 225-226.

In addition, the Coal Act contains provisions that are intended to lessen the economic impact on assigned operators. Indeed, the Coal Act obligations of petitioners and all other assigned operators have been reduced substantially by the three $70,000,000 transfers from the UMWA 1950 Pension Plan to the Combined Fund and by the first of several anticipated transfers from the Abandoned Mine Reclamation Fund. 26 U.S.C. § 9705; 30 U.S.C. § 1232(h). These transfers have eliminated the requirement that assigned operators like petitioners pay any unassigned beneficiaries premiums during the Combined Fund's first four fiscal years. Of course, in the absence of the Coal Act, neither petitioners nor any other assigned operator would have had any legitimate claim to benefit from any of the assets of the 1950 Pension Plan. These assets were held in trust for the exclusive benefit of the Plan's beneficiaries. Likewise, absent the Coal Act, neither petitioners nor any other assigned operator could legitimately have expected to receive any benefit from the Abandoned Mine Reclamation Fund.

Davon's reliance on *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980), is misplaced. Davon Pet. 13-14. Although the taking identified in *Webb's* in-

volved a comparatively small dollar amount, that is not the end of the economic impact inquiry. The effect of regulation is to be measured in relation to the party's experience with the subject matter of the statute at issue. *See Connolly*, 475 U.S. at 226; *Blue Diamond*, 79 F.3d at 525 ("The Supreme Court has stated that the proper inquiry in a multi-employer benefit plan context is whether the plaintiff's liability is proportionate to the plaintiff's experience with the fund at issue.") Under this analysis, even the total elimination of a company's net worth by a government regulation has been held not to violate the Takings Clause. *See Branch v. United States*, 69 F.3d 1571 (Fed. Cir. 1995), *cert. pending*, No. 95-1807 (filed May 6, 1996) (application of cross-guaranty provisions of FIRREA did not constitute taking despite elimination of bank's net worth); *Meriden Trust & Safe Deposit Co. v. Federal Deposit Insurance Corp.*, 62 F.3d 449 (2d Cir. 1995) (same).

Finally, the remaining Takings Clause factor, *i.e.*, the extent to which regulation has interfered with distinct, investment-backed expectations, cannot help petitioners. Petitioners have failed to identify any such expectations. Although petitioners claim that the Coal Act is unconstitutional because it imposes financial obligations that were not foreseeable based on their prior contractual commitments, an alleged lack of foreseeability is not the same thing as interference with distinct, investment-backed expectations. It is well-established that Congress's power to legislate is not confined by the terms of pre-existing private contracts. Pet. App. 30a, *quoting Connolly*, 475 U.S. at 223-24 (citations omitted). Thus, as the district court stated when it denied petitioners' request for a preliminary injunction, "[r]egarding the interference with investment-backed expectations, this court takes the Plaintiffs' argument to be nothing more than a statement that they have gone on to do other things since abandoning coal mining. They have not shown that reliance on the language of the NBCWAs justified an expectation that

they would never have responsibilities to their own retirees or to others retiring from that industry. That argument was laid to rest in *Connolly*." Pet. App. 105a-106a.

Moreover, petitioners' argument that, because the 1950 W&R Fund was a "pay-as-you-go" plan, its beneficiaries could not have had a legitimate expectation of lifetime health care, and that pre-1974 signatory employers therefore have some impermeable constitutional protection against future statutory liability for such care, is untenable. The 1950 W&R Fund and its predecessors provided continuous health benefits to both active and retired coal miners for nearly three decades before the 1974 NBCWA. As the court of appeals explained (Pet. App. 29a), plaintiffs' argument

> ignores the fact that they substantially participated in a system that provided continuous benefits and created legitimate expectations that such provisions would not cease. Any expectation that they could never be held liable for retired miners' health benefits, in light of their participation in the NBCWAs, was not reasonable.

See also UMWA v. Nobel, 720 F. Supp. 1169, 1178 (W.D. Pa. 1989), *aff'd without opinion*, 902 F.2d 1558 (3d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991) (referring to "the 25-year history of lifetime benefits prior to 1974").

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted,

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